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ORIGIN, DEVELOPMENT AND ECONOMIC EFFECTS OF LIMITED LIABILITY IN CORPORATION FINANCE IN ENGLAND AND THE UNITED STATES

BY

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THESIS

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I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPERVISION BY Ray George Ellis

ENTITLED Origin, Development and Economic Effects of Limited Liability in Corporation Finance in England and the United States

BE ACCEPTED AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE DEGREE OF Master of Arts

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CHAPTER I.

The corporation as a form of business organization has proved itself superior to the individual enterprise and partnership. Modern business enterprise is carried on very largely by this form of organization, on account of its many advantages. It is used in many forms of activity, business, political, and social. In the business field, manufacturing, commercial, banking, and financial groups are using it. Politically, the various forms of our government, federal, state, and municipal are organized as corporations. In the social field, there are membership, religious, and fraternal corporations. This form of organization, especially in the business world, is becoming more common every day. The percentage of the world's business that is being done by it is continually increasing.

We are surrounded by corporate activity on every side; we regard it as the natural course of development. We are more or less familiar with the working of the modern corporation. It is here and we use it. Until very recently little has been said or written about the history of corporate development from its earliest traces to the present time. In regard to almost any phase of corporate activity it is difficult to determine when that particular characteristic first began to be used, or what were the circumstances that lead to its adoption.

The purpose of this paper is to show something of the history and development of one corporate characteristic that is very important in modern business, viz. the limitation

of the liability of the stockholder.

Before starting this problem there are two things that must have some consideration: (1) What it is that makes a business unit a corporation, (2) The exact kind of limited liability that is being considered.

In regard to the first of these there are many differences of opinion as to what is, and, what constitutes, a corporation. The economist regards the corporation as a collection of funds, "massed capital" used for certain stated purposes and administered by persons who are agents of the corporation. The lawyer regards the corporation as an artificial or metaphysical person endowed with certain rights and privileges. Thus Blackstone says, "the corporation is an artificial person created for preserving in perpetual succession certain rights, which being conferred on natural persons only, would fail in the process of time." In the Dartmouth College Case in 1819, Chief Justice Marshall of the United States Supreme Court gave a definition that is very similiar to the one that Blackstone formulated. Marshall referred to a corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law." This idea of an artificial person has been held since the fifteenth century in Europe and was well known to the Romans, from whom the Europeans obtained many of their ideas on the sunject. The above two definitions are the two most famous and most quoted, but there were in earlier times very definite ideas as to what made a corporation an independent entity with a personality of its own. There are three particularly clear statements of what con-

stitutes a corporation. One of these dates back to 1610 and was brought out in Sutton's Hospital Case[1]. At this time the following things were said to be "of the essence of a corporation. 1st. Lawful authority of incorporation and that may be by four means, viz., by the common law, as of the king himself, etc.; by the authority of Parliament; by the king's charter; and by prescription. The 2d, which is of the essence of the incorporation are persons to be incorporated, and that in two manners; viz., persons natural, or bodies incorporate and political. 3d. A name by which they are incorporated. 4th. Of a place, for without a place no incorporation can be made. 5th. By words sufficient in law but not restrained to any certain legal, and prescript form of words."

The first requirement is of fundamental importance and is known to have existed in the Roman law. It is stated on good authority[2] that so far as is known prescription and common law corporations were the older forms and that from the first a charter from the king or authority from Parliament was necessary to form a business corporation -- and business corporations are the ones that make the greatest use of the principle that is about to be considered.

1- 10 Rep. 29 b.

2- Samuel Williston. History of the Law of Business Corporations Before 1800.

The three sets of things that go to make a corporation, given in this chapter, occur in Williston's Article in Harvard Law Review Vol. II.

The second requirement is also important but will, of course, always be present in the case of a business corporation. In regard to the third point there have been cases[2] in which the lack of, or, a change in, name did not destroy the corporate nature of the enterprise. The fourth requirement, that of place, was considered very important during the middle ages and until corporations began to be used for more varied purposes. Williston[3] states that 'it is hardly mentioned in "The Law of Corporations" or in Blackstone's chapter (Blacks. Com. Ch. XVIII.) Kyd merely says, "It is generally denominated of some place." (1 Kyd, 368.), and it may be assumed as true of business corporations, as well as of most others, that before the beginning of the present (19th.) century there was no force in Coke's fifth essential for the existence of a corporation, other than as a matter of convenience.'[1] The last requirement "By words sufficient in law..." must of be used in order to carry out the first one. Neither the King nor Parliament can bring a corporation into being without the use of words sufficient in law. If it is concluded that the first of the above four conditions to corporate being is the only one that needs to be considered in connection with (business) corporations, the conclusion will be in agreement with

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1- Mayor of Stafford v. Lolton, 1 B. & P. 40.

2- Harvard Law Review. Vol. II.

3- Bishop of Rochester's Case, Owen, 77.

Woodcock's Case, 1 Lutw. 355.

Other cases are cited by Williston.

Coke, who says, in regard to a corporation already created[1]: "When a corporation is duly created, all other incidents are tacitly annexed ---...and therefore divers clauses subsequent in the charter are not of necessity, but only declaratory, and might as well be left out as:--

1st. By the same to have authority, ability, and capacity to purchase, but no clause is added that they may alien, etc., and it need not, for it is an incident.

2d. To sue and be sued, implead and be impleaded.

3d. To have a seal; that is also declaratory, for when they are incorporated they make or use what seal they will.

4th. To restrain them from aliening or devising out in certain forms, that is an ordinance testifying the king's desire, but it is not a precept and does not bind in law.

5th. That the survivors shall be a corporation, that is a good clause to oust doubts and questions which might arise, the number being certain.

6th. If the revenue increases, that they shall be used to increase the number of the poor, etc., that is also explanatory.

9th. To make ordinances; that is a requisite for the good order and government of the poor, etc., but not to the essence of the incorporation.

10th. The license to purchase in mortmain is

1- Sutton's Hospital Case. 10 Rep. 30.

This is the second of the three lists referred to, above.

necessary for the maintenance and support of the poor, for without revenue they cannot live, and without a license in mortmain they cannot lawfully purchase a revenue, and yet 'tis not of the essence of the corporation, for the corporation is perfect without it."

The list of corporate attributes given by Blackstone is very similar.[1] According to him the incidents which are annexed to every corporation as soon as it is duly erected are:

1st. To have perpetual succession. This is the very end of its incorporation for there only can a succession forever without an incorporation, and therefore all aggregate corporations have a power necessarily implied of electing members in the room of such as go off.

2nd. To sue and be sued, implead and be impleaded, grant or receive by its corporate name, and do all other acts as natural persons may.

3rd. To purchase lands and hold them for the benefit of themselves and their successors, which two are consequential of the former.

4th. To have a common seal.

5th. To make by-laws or private statutes for the better government of the corporation, which are binding on themselves, unless they are contrary to the law of the realm, and then they are void.

1- Blackstone's Commentaries 475.

This is the last of the three lists referred to, above.

Wood's Inst. of the Laws of Eng., Book I, Chap. 8.

It is advisable not to be too sweeping as to just what forms a group of persons into a corporation, and such excellent authorities as Pollock and Maitland advise such caution as this: "We are not likely to find the essence of a corporation in any one rule made of law. If, for example, an English lawyer would make all turn on the common seal, he would be setting up a merely English rule as a necessary maxim in jurisprudence; not only so, for he would be begging an important question about the early history of corporations in England. Some legist may feel inclined to say that a corporation must have its origin in a special act of the State, for example, in England a royal charter; but they again will be in danger of begging a question about ancient history, while they will have difficulty in squaring their opinion with the modern history of joint-stock companies. Modern legislation enables a small group of private men to organise a corporation by registration, and to urge that this is the effect of 'statute' and not of 'common law' is to insist upon a distinction which we hardly care carry beyond the four seas. Or, to come to a more vital point, shall we demand that an individual corporator shall not be liable for the debts of the corporation? 'Ei qui universitati debetur singulis non debetur; nec quod debet universitas singuli debent.' (Dig. 3,4,7.) -- is not this the very core of the matter? Once more modern legislation will say no:- there is no reason why a statute should not say that a judgment obtained against a corporation can not be enforced against all the goods of every single corporator, and this although the corporation still exists:- in ordering

that [illegible] so, the legislature does but contradict itself. In the first half of this century -- nineteenth -- our parliament tried many experiments of this kind. (See, for example, the Act for the Registration of Joint-Stock Companies, 7 & 8 Vict. c. 110. sec. 25, 26.)"[1]

There is one requisite running through these lists that, in regard to business corporations, we may be certain is absolutely fundamental, and it is, that corporations must come into being through the instrumentality of the sovereign power.[2] Both Coke and Blackstone agree that the other things are not essential; that to be "incorporated" seems to have them; they are "incidents" and will always be present.

However, in the earlier English companies, it is difficult to determine when a corporation has been created. For instance, many of the monopolies of the Middle Ages were not corporations and were not intended to be such. They were granted a monopoly only; a separate, artificial person was not created. Nevertheless some of these companies doing business within the country, having a grant from the King or Parliament, but not specifically declared to be a corporation, have performed all of the functions of the corporation as it was constituted at that time. In such cases, or, in any case where a company has a charter from the King or Parliament and exercises some of the functions set forth by Blackstone or Coke as of the "essence of a corporation," I shall con-

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1- Pollock and Maitland. Hist. of Eng. Law. Vol. I, p. 487.

2- Supra. p. 3.

[illegible] it a corporation. This is probably because the corporation has been developed by a slow and evolutionary process.[1] It is practically impossible to determine whether most of the early English companies could, or, could not, be described as the first of corporations, just as it is difficult, at the present time, to draw the line, in some cases, between the limited partnership and the true corporation. In cases of this kind the courts have followed about such a policy as I have suggested, viz. Where little was known except that the fact that they were incorporated, they were held to have all the other corporate characteristics.[2]

By limited liability is meant the limitation of the liability of the shareholders of the corporation. This needs little explanation as it is a familiar principle today. In the modern business corporation the stockholder who has paid in the par value of his stock has no further liability. That is, in case of insolvency, the creditors cannot bring suit against him as they might in the case of a partnership.

1- T. Smith. English Gilds.

T. Staley. The Gilds of Florence.

Geo. Unwin. Industrial Organization in the XVIth. & XVIIth. Centuries.

J. P. Davis. Corporations. Their Origin and Development.

W. R. Scott. Joint-Stock Companies to 1720.

W. S. Holdsworth. The Early History of Commercial Societies. In Juridical Review, Vol. 28.

2- Company of Woolchurchers. Vinal's Abridgment. Vol. V. p. 528.

This is the kind of liability and its limitation that will now be considered. There are cases of special liability of the members of corporations, but they have no direct bearing on this topic, and will, in most cases, be disregarded, such as: the double liability imposed on stockholders of all corporations in certain states[1], the double liability that usually goes with banking and certain other forms of business, wherever they may be situated, a special liability of stockholders for the payment of wages to labor employed. It is conceivable that any kind of stockholders' liability may exist by special agreement. In a case[2] where all of the members of a corporation consented in its behalf, under their private seals, binding themselves and their heirs that the corporation should do certain acts, it was held that they were personally bound. The power that creates the corporation (King, Parliament, legislature.) may also make any kind of special liability for the members of certain corporations which they authorize.[3]

1- Minnesota, California. See Conyngton. Corporate Organization and Management. p. 112.

2- Tillenston et al. v. Vassell et. al. 13. Mass. 10b.

3- Supra. 7 & 8. Ref. Pollock and Maitland.

CHAPTER II.

The corporation is of very ancient origin. It is the opinion of Angell and Ames that it was known to the Greeks, and that the Romans obtained their knowledge of it from them.[1] In the early Roman law there was not a limitation of liability for the members of a corporation. As the Roman corporations were not, in most cases, business or trading organizations, it is not strange that this feature developed later. "In Roman law it seems that if the corporation became insolvent the persons constituting it were obliged to contribute of their personal fortunes."[2]

Later, in the Roman law, there was a limitation of liability set forth in the Code of Justinian in the sixth century. "Si quid universitati debetur singulis non debetur; nec quod debet universitas singuli debent."[3]

The development in England was about the same. In the earlier part of their history there was no limitation of the responsibilities of the members of corporations while after the fifteenth century members were not responsible in their personal property for the debts of the corporation. There is no connection between the lack of this feature in early England and its non-appearance in early Rome. There is, however,

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1- Angell and Ames on Corporations.

2- Select Essays in Anglo-American Legal History. p. 107.
See: Ayliffe 300 (Code Book I tit. 3.) Savigny Sys. 382.
Williston's Article In Harvard Law Review, Vol. XI, p. 160

3- Blackstone (Cooley) Vol. I, p. 485 quoting Pandectae (Flete.)

a connection between the development of the principle of limited liability in England and the use of it by the Dutch Jews and. When the English lawyers began to search the old Roman laws, from the thirteenth century on, it is only natural that they would be influenced by what they found. John P. Davis states that limited liability was not a feature of the early corporate life in England. He further says, 'In a rough way, the members of medieval gilds and municipalities were held jointly responsible for the debts of members, whether incurred in personal transactions, or in transactions relating to matters of common concern; it was only when the community in thought and action and legal rules was complete, in the fifteenth century that the well-known principle of the roman law "Ci quid universitati debetur singulis non debetur; nec quod debet universitas singuli debent." became applicable in England.'1 This statement is in agreement with Pollock and Maitland who say that, "If we insist that the common law can not hold the singuli liable for the debt of the universitas, we shall find little to say about corporations in any century earlier than the fifteenth."2

There is only one authority that I have found who does not agree that limited liability was not well established by the common law in England by the fifteenth century. This

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1- John P. Davis. Corporations Their Origin and Development. Vol. I. p. 98.

2- Pollock and Maitland. History of English Law. Vol. I. p. 497.

authority[1] led him to say: 'It might at least be settled for a long time that the individual members are not liable for the acts of a corporation, and it was even held that 'the personal responsibility of the stockholders is inconsistent with the nature of a body corporate,' (Dyer v. Lyle, 4 B. & S. 371, per Pilgrim, J. J.) yet in the former part of the century, when corporations began insolvent to evade payment by substituting in their stead obliged to contribute their private fortunes, (Ayliffe, 300, referring to Lyde, Ch. 1, Tit. 5; Bacon's Abr. Tit. Ed.) And though it may be hazardous to assert that at common law the rule was the same in England, it is certain that, so far as the evidence goes, it points to that conclusion.'[2] This is followed on the other page by cases where the members were not held liable and by cases where they were held. As I am using the same cases a little further on, I will not take them up here. The cases which he gives to show that members were held liable are exceptional and unusual and seem to involve questions of pleading and procedure rather than a desire on the part of the court to hold individual members of corporations liable for its debts.[3]

The idea of the corporation as a distinct, separate personality had been under discussion by English lawyers for some time by the fifteenth century and was practically accepted

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1- Williston. Harvard Law Review. Vol. II.

2- Ibid. p. 109.

3- The cases are: Dr. Salmon v. The Hamburgh Company; Ch. Cas. 204, 2. c. 2 Vin. Abr. 512.
Bonney v. East India Company. 2 Vern. 396.

by them. As early as the reign of Edward III (1327-1377) the law had reached these conclusions:

1- A corporation is a body distinct from its members.

2- The property of the corporation is distinct from the property of its members.

3- The property of its members can not be taken in execution for the debts of the corporation, nor, vice versa.[1]

A case that came up in 1433 shows the progress of this idea. "As late as 1433 an action of trespass was brought against the Mayor, Bailiffs and Commonalty of Ipswich and one J. Abbe. The defendants pleaded the general plea that Abbe was one of the commonalty and therefore was sued twice over. If the defendants were found guilty, then (it was urged) Abbe will be charged twice over, besides he may be found not guilty and the commonalty guilty; that is to say, he may be found both guilty and not guilty. We do not know how the case was decided but it was twice discussed. Incidentally a fundamental question of corporation law was raised. Suppose that the judgement is given against the commonalty, can the goods of the members be taken in execution? On the whole the judges think not, but are not very sure."[2] It is pointed out by the authors that one of the reasons they were

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1- Holdsworth. History of English Law. Vol. III, p. 460.
See: Year Book 8 Henry VI Mich. pl. 6.
20 Henry VI Mich. pl. 13.
21 Edward IV Pasch. pl. 21. Case of Abbot of Tulme.

2- Pollock and Maitland. Vol. I.

not very sure was the fact that a single [illegible] collection from all the members of a community in case that community could not pay, but, "the obvious inconvenience of this admission they seek to avoid by saying that there is a great difference between the king and anyone else." It is the opinion of Pollock and Maitland that they could not avoid making this admission, as the members of municipal communities were constantly being treated as liable in their goods to satisfy the king for debts that might be made by the community as a whole. In regard to this case the same authorities say that, "a mere doubt about the general principle of corporate liability coming at so late a date as 1430 is remarkable."

A case that occured not long after this shows that the principle of limited liability was well established. In 1437 "It is said that if a man recovers debt or damages against a commonalty he shall only have execution against the goods that they have in common."[1] Following this, there was a case in 1442 in which it was held on a judgement against a corporation that only the goods of the corporation could be taken.[2]

I think there is little question about the principle of the limited liability of the members of corporations being established by the fifteenth century. The cases and authorities cited bear out this opinion. I have not been able to find a

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1- Pollock and Maitland. Vol. I. Fitz. Abr. Execution, pl. 128, citing an unprinted Y. B. of Mich. 16 Hen. VI.

2- Holdsworth. History of English Law. Vol. III, p. 389.

a case on record after 1130 where the goods of the individual members of an incorporated company were allowed to be taken in execution.

CHAPTER III.

There were no more cases involving the liability of the members of companies until after the middle of the seventeenth century. There is considerable indirect evidence to show there was a steady progress in the development of the idea.in the meantime. An interesting case was tried in 1670 which Viner gives as follows: "Money was loaned to the Company of Woodmongers, who were incorporated, and a bond was sealed with their common seal, and subscribed by the defendants, who were two of the principal of the company. The bond was noverint universi &c. nos magistrum & guardianos &c. of the Company of Woodmongers &c. and now the company being dissolved action was brought against those who subscribed the bond; but ruled, that it could not lie; so the plaintiff was nonsuit."[1] Five years later there was a similiar decision: "A member of a company set his name to a bond under the common seal of the company; this does not legally bind him in his capacity."[2] So far as the records show it was seven years before another case bearing on this subject came up, and the decision was "For a duty or charge upon a corporation, every particular member thereof is not liable, but process

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1- Viner's Abridgement of Law and Equity. Vol. VI, p. 298. See also Lev. 237 Pasch. 20 Car. 2 B. R. Edwards v. Brown. Viner also refers to 1 Stra. 434. Show. 174, 3 Wils. 269.

2- Ibid. Vol. VI, p. 299. Arg. Fin. R. 84 Hill 25 Car. 2. in Case of Naylor v. Brown late master of the Woodmongers' Company.

ought to go in their publick capacity."[1]

These are all of the cases occuring during this period that have a definite bearing on limited liability. There were several cases in which the individual members of companies were held responsible for the company's obligations where the company had no goods. However, these were cases involving irregular pleading, usually involving distringas, and the result obtained was because of this and not because the court wished to hold the members of companies liable for the latter's debts.[2] One of these cases (The Hamborough Case) that will be considered in the following extract from an article by W. S. Holdsworth occuring in the 28th. volume of the Juridical Review was different in that the creditors were able to force the company to make leviations against the members of the company for the payment of its debts.

Holdsworth summarizes this whole period as follows: "As early as the fifteenth century it was clear that an individual corporator was not personally liable for the debts of the corporation; (b) and, after some hesitation, (c) this

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1- Viner's Abridgement. Vol. VI, p. 299.

2- Ibid. Vol. VI, p. 310.

Vern. 122. Hill 1682 in Case of Curson v. African Company.

S. C. & S. P. cite 2. Vern. 396 in Case of Harvey v. African Company.

Dr. Salmon v. Hamborough Co.

(b) Holdsworth, H. E. L., III. 369.

conclusion was ultimately accepted in the latter part of the seventeenth century. (a) Indeed, one of the advantages which petitioners for incorporation frequently set out was the clear separation which necessarily followed between the liability of the corporation and that of its members; (b) and it is fair-

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(c) See the authorities cited by Carr, Select Charters (S.S.), XVIII. n. 1. He points out that "the indenture which settled the sums and rents due to the king from the Starch-makers Company (Patent Rolls, 20 Jac. I. pt. x.) provided that no such sums 'shall in any sort be demanded levied recovered or had but only of the body corporate'"; and that in 1655 the Governor of the East India Company got an indemnity from the company "because his name is used in all suits and actions"; Hobbes (Leviathan, 120) thought that "If a body politique of merchants contract a debt due to a stranger by the act of their representative anently, every member is lyable by himself for the whole."

(a) Edmunds v. Brown and Tillard (1668), 1 Lev. 237; Salmon v. The Hamborough Company (1671), 1 Ch. Cas. 204.

(b) Carr (Select Charters (S. S.), XVII., XVIII.) says that the following formula, taken from a petition for incorporation in 1692, is common:- "The same (i. e. a joint stock) is not to be raised unless upon the establishment of a corporation, because if such an undertaking should be carried on only by articles of partnership, the stock will be liable to the particular and private debts of the several partners and

ly clear from the statutes which established the Bank of England that, if the individual corporators were to be made liable for the debts of the corporation, this liability could only be imposed by express legislative enactment. (c) On the other hand, the corporators or shareholders were liable to pay to the corporation the sums assessed upon them by the corporation; and the power to make these "leviations" naturally took a prominent place in the charters of some of these companies. (d) But, that

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subject to be torn to pieces upon the bankruptcy of any of them"; cp. S. P. Dom. (1691-92), 523-4.

(c) 5 & 6 William and Mary, c. 20, sect. 25 -- If the corporation borrows more than £1,200,000 the individual corporators are to be personally liable; 8 & 9 William III. c. 20, sect. 49 -- If the capital is diminished by the payment of dividends so that it is not enough to pay the corporate debts the members are to be liable to the extent of the dividends received.

(d) Select Charters (S. S.), XVIII. n. 1; 1, 2, 91, 92, 164, 215. For instances in which these leviations were made, see Scott, op. cit., II. 47, 48, 59, 66, 80, 366, 367: for cases in which the authority of the council was invoked to force the payment of these leviations, see Hist. MSSS. Com., 4th. Rep. App. 18, 20 (the Muscovy Company); S. P. Dom. (1634), 352, cclxxviii. No. 39 -- Order of Council on petition of the Governor and Company of Silkmen of London, ibid. (1637, 1638), 260, ccclxxxii. No 20 --

being so, it is clear that, if creditors could get an order from a Court that the company should make "leviations" upon their members, the creditors could indirectly make the individual members of the company liable to the extent necessary to satisfy their debt. By a sort of subrogation the creditors could use the powers of the company against the individuals composing it, and so force these individuals to pay. We see this idea forshadowed in a petition to the council in 1639; (a) in 1653 it was proposed to give it a statutory force; (b) and in 1671 this course was sanctioned by the House of Lords in the case of Salmon v. The Hamborough Company. (c) But it should be observed that, as the

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Order of Council on petition of the governor of one of the associations of Royal Fishings; cp. ibid. (1639), 381, ccccxxv. No. 43.

(a) S. P. Dom. (1639), 381, 382, ccccxxv. No. 43.

(b) See the Draft Act "for the recovery of debts owing by corporations" (Somers' Tracts, vi. 187). Under that Act, if the leviations were not made, execution was to be had against the estate of the person who ought to have made it.

(c) (1671) 1 Ch. Cas. at pp. 206, 207 the Lords ordered that the Governor and Assistants of the company should "make such a leviation upon every member of the said company...as shall be sufficient to satisfy the said sum to be decreed to the plaintiff in that cause, and to collect and levy the same, and to pay it over to the plaintiff as the court shall direct ...And if...the said money so to be assessed shall not be

creditors' rights against the individuals depended upon the existence of the company's right to make "leviations" upon the individuals composing it, they lost these rights if in fact the company had no power to make leviations. This opened the door to the possibility of limiting the liability of the members of the company by a contract between the members of the company and the company, which provided that the members should not be liable to be called to pay more than a fixed sum. Such bargains were made; (d) and that they were both common and efficacious

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paid, then and from thenceforth every person of the said company, upon such a leviation shall be made to be liable in his capacity to pay his quota or proportion assessed. And the Loed Chancellor...is to order...that such process shall issue against any such members so refusing or delaying to pay his quota or proportion as is usual against persons charged by the decree of the said court, for any duty in their several capacities." For further information about this case and the difficulties of the company see Hist. MSSS. Com. 8th Rep. App. p. 147, No. 310; 9th Rep. App. pt. ii. p. 27. No. 109; ibid., p. 47, No. 186.

(d) Scott, op. cit., i. 228 -- An agreement in 1637-38, that a shareholder in the Mosquito Islands Company who had paid calls up to L1000 might elect not to go farther; ibid., 344--The shareholders in the Million Bank were promised that they should only be liable to the extent of their stock. I do not agree with Mr. Scott (op. cit., i. 270)

may be gathered from the section of the statute of 1694 dealing with the liability of the shareholders in the Bank of England, which declared that in certain events they were to be personally liable for certain debts, notwithstanding any agreement which they may have made with the company. (a) Thus it would seem that, by the adoption of the corporate form, a clear line could be drawn between the company and its members, the individual liability of the members of the company could be limited in any way agreed on between the contracting parties."

The first statutory guarantee of limited liability was in the form of an Act, in 1662, favoring certain companies in such a way as to amount to limited liability for the members of those companies. Certain events paved the way for this action. The trading and fishing companies were having financial difficulties about the middle of the seventeenth century. In 1633 and 1634 the Fishery society had suffered losses. It was resolved by the members of the company that any further capital subscribed should be exempt from any liability for the deficit of these two years. This was an

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that the Act of 14 Charles II. c. 24, which exempted certain shareholders from the bankruptcy laws, amounted to a limitation of liability; it only comes to this, that they were not to be accounted traders and so could not be made bankrupt; if they were solvent their liability would be unlimited.

(a) 5 & 6 William & Mary, c. 20 sect. 25.

unusual arrangement and it is not known, had a case come up involving the company, whether the Fisheries society would have been classed as a corporation and the principle of limited liability upheld or not.[1] "Again in the Mosquito Islands Company it was agreed that any member who had paid calls up to L1,000. a share might elect 'not to go farther', in which case he should be free from further calls."[2] W. R. Scott remarks that this resolution would have raised some interesting legal questions, had it been necessary to assess the shareholders for the payment of the company's debts.[3]

Then came the Act of 1662, mentioned above.[4] As Scott says, "The most remarkable feature, connected with the companies of the Restoration, was the Act of 1662, which created a species of limited liability in favor of the shareholders in the EAST INDIA, AFRICAN, and FISHERY companies. It was enacted that subscribers to these undertakings should not pro tanto be subject to the law of bankruptcy, in the event of losses being incurred by any of the companies named. The effect of the statute was that a shareholder was only liable for the amount unpaid on his shares, and it is clear that such legislation was disadvantageous to unincorporated companies." Holdsworth does not agree with this view.[5] He be-

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1- W. R. Scott. Joint-Stock Companies to 1720. Vol. 1, p. 228.

2- Ibid.

3- Supra. p. 22, Note (d)

4- 14 Car. II. c. 24.

5- Same as 3.

lieves that it only saved them from enforced bankruptcy and that as long as the companies mentioned in the Act were solvent they would be fully liable. The Act[1] itself does not appear to justify a conclusion that limited liability of the members of those companies was the exact thing that was established. It would seem that Holdsworth held himself to the letter of the Act while Scott studied it in its setting and determined the legislative intent.

1- The Act reads as follows:

An Act Declaratory Concerning Bankrupts.

"Whereas divers Noblemen, Gentlemen and Persons of Quality, no ways bred up to Trade or Merchandise, do oftentimes put in great stocks of Money into the East India Company, or Guiney Company, and the Fishing Trade, and such other publick Societies, and receive the Procede of those Stocks sometimes in Monies, sometimes in Commodities which they usually sell for Money, or exchange again; by which means the Trade of those Companies is much encouraged, Fishing and Navigation increased, and the publick good of the whole Kingdom very much advanced:

II. Notwithstanding which great Advantages to the Publick, there hath lately been some Opinion conceived, that such persons may and ought to be made subject to the statutes provided against Bankrupts;

III. For the better declaring and explaining the Law therein, and to the end that such persons may not be discouraged in those honorable Endeavors for promoting publick Undertakings:

All of the evidence points to the fact that there has been a well defined understanding of the principle of limited liability for the shareholders of corporations in England since the beginning of the fifteenth. There is also good reason to believe that the principle was much used during that time by the incorporated companies. The cases point to this conclusion;

Continued:

(2) Be it declared and enacted by the King's most Excellent Majesty, with the Advise and Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That no Person or Persons whatsoever who have adventured or put in, or who hereafter shall adventure or put in any Sum or Sums of Money in the said East-India Company or Guiney Company, or into any joint-stock or Stocks of Money by them or either of them made or raised or to be made and raised, for and towards the maintaining and carrying on the Trade of said East-India Company or Guiney Company managed or to be managed, or who have formerly or who shall hereafter adventure or put in any Sum or Sums of Money into any Stock or Stocks of Money for the managing or carrying on of the said Fishing Trade, or the Trade now called the Royal Fishing Trade, and shall receive and take his or their Part or Dividend of Fish, Goods, or Merchandise in Specie, and shall receive or exchange the same, shall for or by reason only of such Adventure of Monies so put into the said East-India Company or Guiney Company, or into any Stock or Stocks for and towards the said Fishing Trade, or for or by reason only of the receiving and taking

the secondary writers all agree that the principle of limited liability was known and used. Holdsworth and Scott do not agree on the Act of 1662. However, I am of the opinion that a study of the Act itself, even without taking into consideration the legislative intent that may not show in the letter of the law, will bear out Scott's opinion.

Continued:

such Fish, Goods and Merchandizes in Specie, or selling for Money, or exchanging the same again, be adjudged, taken, esteemed or reputed a Merchant or Trader within any Statute or Statutes for Bankrupts, or to be liable to the same.

IV. Provided always, and it is hereby declared, That every Person or Persons who shall trade, traffique or merchandize in any other Way or Manner than in the said Royal Fishing Trade, or the Trade managed by the said East-India Company or the Guiney Company as aforesaid, shall for and by reason of his and their mer- Trading, Traffiquing and Merchandizing, be liable to Commission and Commissions against Bankrupts, as fully to all Intents and Purposes, and not otherwise, as if this Act had never been made; any thing in this Act to the contrary notwithstanding.

V. And be it further enacted, That a Verdict and Judgement in Replevin heretofore had or given in the Term of Easter in the year one thousand six hundred fifty-three, in the King's Bench, betwixt Phinehas Andrews, Plaintiff, Richard Woolward and William Meggs, Defendants, whereby Sir John Wolstenholme Knight, an Adventurer in the said East-India Company, was adjudged and found liable to a Commission of Bankrupts, only for and by reason

Conclusion of the Act of 1662:

of a share he had in the joint Stock of the said Company, and a pretended selling for Money Part of the Return which he had in Specie for his said Adventure, shall be and is hereby declared contrary to Law, and is hereby reversed and made null and void.

VI. Provided always and be it enacted, That no Act, Sale or Disposition of any of the Lands, Tenements and Hereditaments, Goods, Chattels, Debts or Credits of the said Sir John Wolstenholme, or any Distribution of the same, or of any Money, heretofore made or done by the Commissioners of Bankrupts, or any claiming under them or any of them by Virtue or Colour of any Commission or Commissions taken out against the said Sir John Wolstenholme, and whereof any Person or Persons is by Virtue or Colour of or under any such Act, Sale or Disposition actually seized or possessed, shall hereby be impeached or frustrated, but that the same be enjoyed for and toward Satisfaction of the Debts for which the same have been disposed or distributed.

CHAPTER IV.

With the bursting of the South Sea Bubble[1] in 1720 corporate development received a set-back from which it did not recover in a little over a hundred years. During this period there was very little corporate activity compared with the years immediately preceeding or following. There was no advance made toward a more general use of limited liability; this came with renewed activity in the corporate form of business organization.

When the corporation again came into extensive use, near the end of the first quarter of the nineteenth century, limited liability seems to have been the particular feature for which they were organized. A great controversy was carried on in England as to the advantages and disadvantages of this corporate characteristic. Many of the people who were in favor of it wished to go a step farther and have partnerships with limited liability, modeled after the French partnership "en commandite."[2] This agitation was kept up for over fifty years. While it did not succeed in legalizing the limited partnership[3] in England, it did bring about great progress in the dev-

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1- Scott. Joint-Stock Companies to 1720. Vol. I.

2- See the following:

M. A. Begbie. Partnership "en commandite." 1848.

Spencer Brodhurst. Limited versus Unlimited Liability in MacMillan's Mag. Nov. 1898. Vol. 79, p. 20-29.

3- The limited partnership was not made legal in England until 1907.

elopment of complete limited liability for corporations.

George Dodd, writing in 1865, summarized the progress of the limited liability system. As the Act of 1844 is the first one to receive much consideration at the hands of the writers of the Law Records, Abridgements, etc., the first part of his article will be included here. He says, "As long ago as 1826 an Act was passed, empowering the Crown to confer charters of incorporation on certain trading and other companies, declaring in the charter some limit to the liability of the shareholders. As this was a favor, specially shielding the shareholders from that unlimited liability which would otherwise rest on them, it was understood that the companies thus favored ought to be more than usually advantageous to the public. In 1834 an Act declared that 'divers companies associate themselves together for trading, charitable, literary, or other purposes, which it would be inexpedient to incorporate by royal charters, although it would be expedient to confer upon them some privileges incident to corporations;' thereupon the Crown was empowered to grant Letters Patent to such exceptional companies. Shareholders' liability was to be limited not in amount, but in time, terminable when they had for three years ceased to be shareholders. In the same year a particular statute placed on an improved basis the conditions for investing small sums in friendly societies, and insuring honesty in their management. In 1836 was passed an Act relating to Benefit Building Societies. Such societies had before existed; but this statute legalized and encouraged them, and applied many provisions of the Friendly societies' Act to them. The shares were not to exceed 100 l.

each, and the payments to exceed 1 l. per month. The society was to but or build houses, and to hold them as mortgages till all the instalments were paid up. The kind of liability was the same as in friendly societies. In 1837 was held one of many Perliamentary Committees[1], to inquire whether it would be safe to sanction the principle of limited liability in trade, more or less on the basis of the French sociétés commandite; much useful information was collected and published, but the committee did not make any definite recommendations. In the same year was passed an Act for enabling the Crown to confer certain powers and immunities on trading and other companies, in the form of charters of limited liability. The first to avail themselves of this privilege was the Commercial Steam Navigation Company, for running steamers from London to the Channel Islands, France, and Spain. In 1841 an Act was passed, not immediately effecting liability, but strengthening the security of Banks of Issue; the banks were required to 'make up just and true weekly accounts of the average amount of notes in circulation,' and in other ways to give publicity to their proceedings."[2]

In 1844 was passed the Companies Act[3] which applied to every joint stock company, as defined in the Act, in England,

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1- These committee reports are given in M. A. Begbie's Partnership "en commandite.", Appendix B, p. 235.

2- Geo. Dodd. Progress of the Limited Liability System. In the British Almanac, 1865. Volume 79.

3- 7 & 8 Vict. c. 110.

or Ireland, or in Scotland, if they had an office or place of business in any other part of the United Kingdom, established for "any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance, with certain exceptions viz., banking companies, schools, scientific and literary institutions, and also friendly societies, loan societies, and benefit building societies, respectively duly certified and enrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent specified in the Act.....The Act did not, except where expressly made applicable, apply to partnerships existing before November 1, 1844, or, except as specially provided, to any company for executing such works as bridges, canals, reservoirs, railways, harbours, and the like, which could not be executed without Parliamentary Authority, or (except as specially provided.) to any company incorporated by statute or charter, or to any company authorized by statute or letters patent to sue or be sued in the name of some officer or person."[1] The liability was less than before but the shareholder was still liable for three years after he had sold his shares. This limitation in time was practically the only benefit of this Act as far as limited liability is concerned. It did bring about a more uniform

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1- Earl of Halsbury. The Laws of England. Vol. V., p. 25.

See also:

G. H. Lewis. Liabilities Considered. Chap. II & III.

Geo. Dodd. Progress of the Limited Liability System. In the British Almanac, 1865. p. 104.

system and served to hasten more direct legislation in regard to the liability of the members of companies.

In the next year, 1845, was passed the Compaines Clauses Consolidation Act[1] which applied to a certain group of corporations, viz., those for carrying on or undertaking enterprises of a public nature. It was to apply to all such companies incorporated by Acts thereafter passed. The execution against stockholders was limited to the extent of their shares of capital not fully paid. Practically every account of the development of the system of limited liability of stockholders of incorporated companies leaves the Act of 1845 out of their account. One or two of them refer to it as having been passed in that year, but say nothing about it. It appears to me that this was a definite s step. It not only gives complete limited liability but provides that this Act shall apply to all other companies of a similiar nature to be incorporated by future Acts. The following extracts from the law itself will bear this out: "If any execution, either at law or in equity, shall have been issued against the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up[2]: provided always, that no such execution shall issue against any shareholder except under an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open

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1- 8 & 9 Vict. c. 69.

2- The underlinings are my own.

court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly, and for the purpose of ascertaining the names of the shareholders and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to such execution at all reasonable times to inspect the register of the shareholders without fee.....If by any means such execution shall have caused any shareholder to pay any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.....Companies hereafter created by special Act must not conflict with this Act."[1]

The Acts of 1844 and 1845 marked the beginning of further serious discussion of the extension of the principle of limited liability. In 1844 another Parliamentary Committee collected evidence on the question but made no recommendations. In 1851 a Committee of the House of Commons attempted another investigation and ended by recommending that the Crown appoint a commission to investigate the whole question of limited liability. In 1852 an Act was passed encouraging industrial and provident institutions. This Act gave them partial limitation of liability for their shareholders. The next year the Crown appointed the commission that had been recommended by the House of Commons. The results of this commission are very instructive and show the importance that was attached to the principle in question as well as the conflicting opinions. 'The commission, composed of judges, barristers,

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1. Chitty's Statutes of the Realm. Vol. II.

and commercial men, addressed queries to leading persons in most European countries concerning the practical working of the commandite, or limited liability principle; and they also examined commercial men at home. They framed a series of thirty-one questions, and sent printed circulars relating to them to ninety influential and experienced persons in the United Kingdom and America, and to twenty Chambers of Commerce. Seventy-five answers were received; and the commissioners were not a little embarassed by the result. "Gentlemen of great experience and talent have arrived at conclusions diametrically opposite; and in supporting their conclusions, have displayed reasoning powers of the highest order. It is difficult to say on which side the weight of authority in this country preponderates." Then, to ascertain the opinions of foreigners on the actual working of the commandite system, the commissioners framed a circular of fifteen questions in French, and sent copies of it to twenty-two firms and individuals. Of the result they say, "The opinions received from foreign countries preponderate in favor of limited liability; but many of the foreign correspondents, while bearing testimony to the beneficial operation of the law as to partnerships with limited liability in their own countries, suggest that it may, nevertheless, well be, that the circumstances of the trading interests of the United Kingdom may give it a very different operation there." When such men as Lord Ashburton, Mr. Norman, Mr. Frances Baring and Mr. Nassau Senior pronounced for limited liability, and Lord Overstone, Mr. Tooke, Mr. Larpent, and Mr. Harsley Palmer, against it, it is no wonder that the commissioners found unanimity of opinion among themselves to be unattainable; they

divided in the ratio of five to three against limited liability.'[1]

In 1854 a return to the House of Commons showed that since 1837 there had been 164 applications for the charters of limited liability that existing statutes empowered the Crown to grant under special circumstances. Of this number of applications ninety had been granted. Some of the companies receiving them were: the Royal Mail ,Steamship , the Great Eastern Ship, the Peninsular and Oriental Ship, the Society of Arts, the Great Exposition of 1851, the Panoptican, the Crystal Palace, the General Theatrical Fund, together with gold, banking, and electric telegraph companies.

The demand, by this time was so great that, in 1855 two bills were brought before Parliament; one relating to partnerships, and one relating to companies. The former failed; the second was passed. By this Act[2] any joint stock company formed after the going into effect ,of this law, with a capital divided shares of a nominal value of 10 l. each, or any solvent joint stock company already registered under the Companies Act of 1844, or constituted under any private Act of Parliament, was enabled to obtain a certificate of complete registration with limited liability on complying with the Act. Assurance companies were expressly excluded by this Act.

2- 18 & 19 Vict. c. 133.

See Earl of Halsbury. Laws of England. Vol. V. p. 25.

Geo. Dodd. Progress of the Limited Liability System.

1- Same as last reference above.

A year later, in 1856 a Joint Stock Companies Act[1] was passed which repealed the Companies Act of 1844[2] and an Act[3] slightly amending it and the Limited Liability Act of 1855[4] but provided that the repeal should not take effect in regard to any company completely registered under the Act of 1844 until such company had obtained the registration mentioned in the Act. It was further provided that every company registered under the Act of 1844 should register itself as a company under the Act of 1856 either with or without limited liability. Other companies duly constituted by law before the Act of 1856 and having seven or more members might at any time thereafter do likewise. In either case registration with limited liability was allowed only when the company had obtained it under the Limited Liability Act of 1855, or had obtained the assent of a certain majority of its shareholders. Banking and Assurance companies were excluded from the advantages of this Act. With these exceptions any seven or more persons might associate for any lawful purpose by signing a memorandum of association, and complying with the other requirements, form themselves into a company with or without limited liability. Registration was effected with the Registrar of Joint Stock Companies, who gave a certificate of incorporation to the company, which thereupon

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1- 19 & 20 Vict. c. 17.

2- 7 & ' Vict. 110.

3- Stat. 10 & 11 Vict. c. 78.

4- 18 &19 Vict c. 133.

These Acts are given in detail in Earl of Halsbury. Laws of England. Vol. V. p. 25 --

became a body corporate, with perpetual succession, a common seal, power to hold lands, and limited liability.

The Joint Stock Companies Act of 1857[1] repealed the Act of 1856 but "it was provided that the three Acts[2] which had been repealed should be deemed to have been and still to remain unrepealed as to any company completely registered which had not obtained registration under the Act of 1856, until the company obtained registration under the Acts of 1856 and 1857, after which they should be repealed as to such company." This Act also enabled seven or more shareholders, with a fixed capital in shares, to register with the Act either with or without limited liability. If the liability was not already limited, certain assents had to be obtained in order to register with limited liability. This Act systematized the whole problem of liability by providing that if after July 13, 1857 more than twenty persons were engaged in a partnership business for profit, each of them should be liable for the whole debts of the partnership unless they were:

1- A company registered under the Act of 1856.

2- A company incorporated or otherwise legally constituted by or in accordance with some Act of Parliament, royal charter, or letters patent.

3- A company engaged in working mines in the Stannories Jurisdiction.

1- 20 & 21 Vict. c. 14.

2- 1844 (7 & 8 Vict. c. 110.) 1855 (18 & 19 Vict. c. 133.) 1856 (19 & 20 Vict. c. 47.)

All companies, whether they had limited liability or not, except insurance companies, must be registered under the Acts of 1856 or 1857 before November 3, 1857. If they were not so registered, they would be incapable, until registered, of sueing or paying dividends; and their directors and managers would be liable to penalties. The default, however, would not render the company illegal.

Banking companies, by another Act[1], were brought under the operation of the Joint Stock Companies Act of 1857, in that same year, but were not given limited liability. This feature, except as to notes, was given them by a subsequent Act[2].

Other Acts have been passed[3] making changes, improving certain means of proceedure, repealing former laws and substituting new ones in their places. In all cases there has been no tendency to weaken the principle of limited liability.

From the above Acts it is evident that the principle of limited liability has been recognized by statute, in England, to some extent , at least, since the beginning of the second quarter of the nineteenth century. Since that time there has been staedy progress in extending and improving the principle until, by the Act of 1857, any seven or more persons engaged

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1- 19 & 20 Vict. c. 47. s. 2.

2- Stat. 21 & 22 Vict. 91.

3- 1862 -- 25 & 26 Vict. c. 89. s. 205.
1867 -- 30 & 31 Vict. c. 131.
1900 -- 63 & 64 Vict. 48.
1907 -- 7 Edw. 7. c. 50.
1908 -- 8 Edw. 7. c. 69.

in a business for profit may form themselves into a corporation with limited liability and any twenty or more persons so employed must so constitute themselves or be considered a partnership in which each member will be held liable for the debts of the whole.

The whole movement for the protection of the individual members of incorporated companies may be summed up as follows: (1) Since the fifteenth century the members of incorporated companies have been given protection, beyond their fully paid shares of stock, by the common law. (2) Since the middle of the nineteenth century stockholders have been allowed limited liability by statute.

CHAPTER V.

From 1777 to about 1795 most of the session laws of New York state were concerning constitutional questions, the organization of the subdivisions of that state, and the development of a system of laws. During this time, and, especially after 1795 many road and turnpike companies were incorporated. There were hundreds of these incorporations but in none of them is the question of limited liability mentioned. They were given the right of eminent domain and all of the other characteristics of a corporation. These characteristice were so carefully enumerated and the separate personality made so plain that I am convinced they took the existence of limited liability for granted; they understood that it was of the "essence of incorporation." There are several things that caused me to come to this conclusion: (1) The acts of incorporation, in the early session laws of New York state, bring out the nature of a corporation so perfectly that unlimited liability seems inconsistent with it. (2) The legal writers maintain that this principle was understood by the people of that time.[1] (3) The New York Chamber of Commerce was incorporated by the English Crown under Letters Patent; In the 5th. session of the New York legislature they were re-incorporated with all of the rights and privileges of their first incorporation, and incorporations by letters patent carried limited liability of the members. (4) The common law of England was made the basis of law in New York and the early states, and the English common law recognized the limited liability of shareholders as one of the features of a corpor-

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[1] Kent's Commentaries. Vol. II.

ation. (5) When the manufacturing corporations bacame common, limited liability was one of the features mentioned in the acts incorporation them. There is nothing to indicate that there was any change in legislative policy at this time. It seems to have been merely a case of stating what already existed. (6) There are a few cases, which will be discussed later, in which the corporators were made liable in their individual and private capacities. As these cases occured before the time when limited liability came into question in New York state (1825), the mere fact that it was necessary to mention that they were to be liable in their individual and private capacities seems to indicate, that if this were not mentioned, the corporators could not be so held.

At the end of the eighteenth century this principle was being mentioned along with the other corporate privileges. The stockholders of the Manhattan Company for supplying the city of New York with pure and wholesome water were liable for calls: "all such sums of money by them subscribed or to be subscribed." There is nothing in the act[1] to indicate that the subscribers or stockholders could be held for more, either by the directors or by creditors, and the wording of the act seems to imply that they could not be held responsible beyond their paid up shares.

An interesting act was passed April 28, 1786 by the legislature of New York. This is made a strong argument, by J. S. Davis[2], to prove that limited liability existed early.

1- Laws of New York. 1797-1800. Vol. IV. p. 433.
2- Essays in the Earlier Hist. of Am. Corporations.

He states that the legislature of the state of New York gave limited liability to a company that was not even incorporated: "The Associated Manufacturing Iron Company of the City and County of New York was granted....limited liability for seven years 'for debts contracted in the company name, provided that a duplicate of the subscription agreement and an up-to-date list of subscribers, with their holdings, should be filed within four months and kept on file in the office of the clerk of the city and county.' Whether incorporation was even sought is doubtful. Clearly it was not granted." It is true that this was not an incorporated company; it is also true that incorporated companies were enjoying the advantages of limited liability at that time, but there is some doubt as to whether or not the legislature granted limited liability to the members of this unincorporated company, as that term is usually understood. The act reads as follows: "Whereas Samuel Ogden, William Constable, William Neilson, Solomon Simpson, Alexander Stewart and others, have represented that they are disposed to associate themselves by the name of 'The Associated Manufacturing Iron Company of the City and County of New York' for the purpose of promoting the manufacturing of iron in this State; Therefore, Be it enacted by the People of the State of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said Samuel Ogden, William Constable, William Neilson, Solomon Simpson, Alexander Stewart and others their associates, shall severally and respectively be liable for every debt contracted on the credit of the said company by the name aforesaid, for the special purposes of promoting the manufacturing of iron, in such proportion of the

whole of the said debts from time to time contracted on the credit of the said company, as his or her subscription or stock shall bear to the whole amount of the stock of the said company, without regard to the sume by the said copartners respectively paid for the discharge of any other debts by the said company contracted: and that such persons composing the said company, shall not jointly liable for the discharge of such debts, beyond the whole stock of the company; any law, usage or custom to the contrary thereof notwithstanding. Provided always, That a duplicate of the original articles of agreement subscribed by all the persons composing such company and particularly specifying the shares and am amount in value thereof, of each of them, in the said stock of the company, shall within four months after the passing of this act be filed in the office of the clerks of the city of New York, to which duplicate every person shall from time to time be of the said company shall from time to time subscribe his or her name, and specify his or her share in the stock of the said company, and no person whose name shall not be signed to the said duplicate agreement filed in the clerks office shall receive any benefit from the provisions of this act.

And be it further enacted by the authority aforesaid, That this act shall be in force for the term of seven years and no longer."[1]

There is one thing, above all others that this act does show, and that is, that, from this time on, the legislature no longer omits comment on liability. It is made limited or unlimited by statute, in most cases hereafter. At any rate, the leg-

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1- Laws of New York. Vol. II, p. 295.

islature states its position often enough to leave no doubt as to the status of liability, by statute, at any particular time. Of course, there is a conflict between statute and common law whenever stockholders are made liable in their individual and private capacities for the debts of incorporated companies.

An act was passed March 30, 1797 to incorporate the stockholders of the Hamilton Manufacturing Society. The Act contains this, "Provided always that nothing in this act contained shall be taken or construed to exonerate the members of the said corporation from any debts which may hereafter be incurred by the directors thereof, but that each and every of the members thereof shall be liable to be prosecuted to judgement, in his individual capacity, for any debt due from the said corporation whomsoever."[1]

J. S. Davis[2] states that this is "the only instance of this kind that I have seen among the corporate charters." He is evidently speaking of the early corporate charters and his statement holds true until about 1825 when there was a reaction against the principle of limited liability and almost all new incorporations, for a time, were made fully liable.

Nothing further is heard of this company and it probably never went into operation. The fact that this is the only case of its kind among the early incorporations, and the fact that they so clearly state that they must be liable, is further indirect proof that this case was unusual, a departure from the regular policy of the time.

In this connection, J. S. Davis has another interesting

1- Laws of New York. 20th. Session.
2- J. S. Davis. Earlier Hist. of Am. Corporations. See Index.

illustration, and some remarke that agree with the statement that I made above[1] about the English common law being the basis of liability in this country and limited liability being taken for granted. He says, "In the absence of general statutes and decisions, it is necessary to turn to the specific acts of incorporation to discover details of the public policy.....Limited liability was recognized as an attribute of an incorporated company, almost invariably without specific mention; indeed it was a principal object desired through incorporation. A subscriber to the Bank of New York, in 1784, refused to pay his subscription when the legislature denied a charter, saying: 'When the regulations were published and agreed upon, it was stipulated that no subscriber should be liable for more than his stock. This presupposes the grant of a charter; for, without it, this article could not take effect; should the subscription money be at present paid in, the stockholders become to all interests and purposes bankers, and every man is liable -- for all the engagements of the bank to the extent of his whole fortune.' In the petition of the directors of the bank for a charter in July, 1789, it is stated: 'That standing on the footing of a private company, in which each and every member is supposed to be personally liable for all the engagements entered into, it has been found that many persons who would otherwise be desirous of becoming subscribers, are deterred by that circumstance from doing it; whereby the increase of the stock of the bank is obstructed and the operations proportionately confined.' In the single instance, that of the Hamilton Manufacturing Society, New York, 1797, was this limitation

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1- Supra. page 41.

of liability refused to a corporation."

Limited liability continued to be a feature of the incorporations until near the beginning of the second quarter of the nineteenth century. An act passed in 1811 to incorporate the Clinton Woollen Manufacturing Society of the County of Oneida may be taken as representative of the legislation of the first quarter of the nineteenth century. This act contained the following:

> "VIII. And be it furthermore enacted, That for all debts which shall be due and owing by the said company, the persons composing the said corporation at the time of its dissolution, shall be responsible in their individual and private capacity to the extent of their respective shares, and no further, on any suit or action to be brought or prosecuted after the dissolution of the said corporation."

Some of the other acts that were passed during the 34th. session of the legislature of New York, containing the same provision, are:

An ACT to incorporate the Somerstown Manufacturing Society. Passed February 22, 1811.

An ACT to incorporate the Jamesville Iron and Woollen Factory. Passed March 8, 1811.

An ACT to incorporate the Stockholders of the New York Sugar Refining Company. Passed March 22, 1811.

An ACT to incorporate the Chenango Manufacturing Society in the County of Chenango. Passed April 3, 1811.

An ACT to incorporate the Stockholders of the Columbian Lead Mine Company. Passed April 5, 1811.

An ACT to incorporate the Cornwall Cotton Company.
Passed April 8, 1811.

An ACT to incorporate the Oldenborneveld Manufacturing Company. Passed April 9, 1811.

An ACT to incorporate the Montgomery Manufacturing Society. Passed April 9, 1811.[1]

Some of the acts passed during the 35th. session of the legislature were:

An ACT to incorporate the Ulster Lead Mining and Manufacturing Company. Passed June 1, 1812.

An ACT to incorporate the Stockholders of the Dutchess County Slate Company. Passed June 8, 1812.

An ACT to incorporate the Onondaga Manufacturing Company
Passed June 9, 1812.

This company was placed under one special liability. In addition to the above mentioned clause, its act of incorporation contained this: "And be it further enacted, That it shall and may be lawful for the president and directors of the Onondaga Manufacturing Company, or their successors in office, to erect a gristmill for the use and benefit of the said company: Provided, That the individuals composing said company shall at all times hereafter be responsible, both in their individual and corporate capacity, for all debts contracted in erecting said mill and for keeping the same in repair." This is not at all unusual for corporations in those days were narrowly restricted in functions. If they wished to enlarge their sphere of activities and to go

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1- These acts may be found in Laws of New York, 34th. session.

beyond what a strict interpretation of their charter indicated they might do, then it was considered only fair that they should assume addition obligations in regard to that function. In all other respects they had limited liability, just the same as their contemporaries.

An Act to incorporate the Clason Woollen Manufacturing Society in the Town of Yonkers, in the County of Weschester.

Passed June 19, 1812.[1]

All of these acts were the same as those passed in the 34th. session, in most cases containing the clause quoted on page 47, or words to the same effect.

The uniformity of the above acts is accounted for by two general acts in regard to corporations that were passed during the 34th. session. These acts stated exactly how the acts incorporating all companies must read in regard to the different features. The first general act, passed March 22, 1811, contained this clause, "VII. And be it further enacted, That the stock in such company shall be deemed personal estate, and be transferable in such manner as shall be prescribed by the laws of the company: and that for all debts which shall be due and owing by the company at the time of its dissolution, the persons then composing the company shall be individually responsible to the extent of their respective shares of stock in the said company, and no further."[2]

1- These acts may be found in Laws of New York. 35th. session.

2- Ibid.

All "acts" hereafter quoted may be found in session laws, under the year they are dated.

Less than a month later, April 9, 1811, another general act, similiar to it, was passed. This one was primarily for the benefit of creditors and aimed to bring about uniformity and honesty in the winding up of corporations. It read as follows:

"An ACT for the Relief of the Creditors of Corporations created by any Law of this State.

I. Be it enacted by the People of the State of New York, represented in Senate and Assembly, That upon the dissolution of any corporation already created or which may be hereafter created by any law of this state, the president and directors, or the managers of the affairs of the said corporation at the time of its dissolution, by whatsoever name they may be known in law, shall be trustees of such corporation with full power to settle the affairs, collect the outstanding debts and divide the monies and other property among the stockholders, after paying the obligations due and owing by such corporation at the time of its dissolution, as far as such monies and property shall enable them.

II. And be it further enacted, That the persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name, or in their own names and individual capacities, for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the monies and property of such corporation at the time of its dissolution."

There were some acts of incorporation during the 34th. and 35th. sessions of the legislature in which nothing was said about the liabilities of the corporators. If there were any doubts in the mind of an investigator, on account of these cases, the two general acts just quoted should remove them.

The acts of incorporation passed during the next three sessions contained the same limiting clause.[1] The following incorporations, one for each session, are offered in proof of this statement:

An Act to incorporate the New York Copper Manufacturing Company. Passed April 9, 1814. 37th. Session.

An ACT to incorporate the Dutchess County Marble Company. Passed March 19, 1813. 36th. Session.

An ACT to incorporate the Linen Company. Passed April 18, 1815. 38th. Session.

Again a general act reinforces the conclusions obtained from a study of the individual incorporations. This general act was passed during the 36th. session, April 9, 1813, and reads as follows:

'Whereas it will be of general public advantage, and aid the several manufacturing companies incorporated in this state, as well as many private individuals engaged in domestic manufactures, if a company should be established for the purpose of disposing of articles solely of American manufacture, and to make loans thereon when deposited for sale:

1- Supra. Page 47.

Therefore, I. Be it enacted by the people of the state of state of New-York, represented in Senate and Assembly, That Thomas Storm, Isaac Marquand, Seth Capron, and all such other persons as now are or hereafter shall be associated for the purpose aforesaid, be and are hereby ordained, constituted and declared a body corporate and politic in fact and in name, by the name and style of "the president and directors of the commission company," and that they and their successors, for the term of fifteen years hereafter, shall and may have succession, and shall be persons in law capable of suing and being sued, defending and being defended, answering and being answered unto in all courts and places whatsoever, and of holding and conveying real and personal estate for the use of the corporation, and that they and their successors may have a common seal and may change and alter the same at their pleasure: Provided, That such real and personal estate shall be necessary for the objects contemplated in this act.

III. Ane be it furthermore enacted, That the total amount of debts which the said corporation shall at any time owe shall not exceed twice the sum of the capital stock subscribed and actually paid into the said company, and in case of such excess, the directors under whose administration it shall happen, excepting such as are absent, or not assenting, shall be liable for the same in their separate and private capacities, but this shall not be construed to exempt the said corporation or any estate real or personal which they may hold as a body corporate from also being liable and chargeable

with such excess."

It will be noticed that the last sentence of the above act says that the property which they own "as a body corporate" may be taken for debt, but it does not go on and mention the stockholder.

The next general act, passed February 25, 1815, in the 38th. session of the legislature, will make the policy of the legislature, during this period, still more clear. The act follows:

'An ACT to amend the Act entitled "An Act relative to Incorporations for Manufacturing Purposes".

Be it enacted by the People of the state of New-York, represented in Senate and Assembly, That from and after the passing of this act, it shall and may be lawful for any five or more persons who shall be desirous of forming a company for the purpose of manufacturing clay or earth into wares or articles for any use whatsoever, to associate together and form such company according to the directions and restrictions mentioned in the act entitled "an act relative to incorporations for manufacturing purposes," passed March 22d, 1811; and such company when formed, and their successors, shall be a body politic and corporate, in fact and in name, with all the privileges, capacities and liabilities in the said act mentioned and contained.'

This act not only gave corporators the same limitation expressed in the act of 1811, but operated as an enabling act for any persons desirous of entering this particular line of business. It is significant that in order to "encourage" industry this feature is always included.

Only a year later, in the 39th. session of the legislature another general act was passed, March 29, 1816, called An ACT to Continue in Force Certain Acts therein mentioned. By the terms of this act was continued in force until 1817 and no longer "an act to amend an act relative to incorporations for manufacturing purposes" passed February 25, 1815. It is evident from this that there was manifesting itself a slight opposition to the extension of these generous terms to corporators. Nevertheless they evidently intended to make it work while it lasted as they included a clause to encourage other lines of industry:

> "II. And be it further enacted, That from and after the passage of this act, and during the time in which the acts above mentioned shall continue in force, it shall and may be lawful, for any five or more persons, who shall be desirous of forming a company for the purpose of manufacturing pins, or for the purpose of manufacturing beer, ale or porter, or for the purpose of extracting lead from ore, to associate together, and form a company according to the directions and under the restrictions mentioned in the act, entitled, 'an act relative to incorporations for manufacturing purposes;' and such company when so formed, and their successors, shall be a body politic and corporate, in fact and in name, with all of the capacities, privileges, and liabilities, in the aforesaid act mentioned and contained."

The next year, when this act was to have expired, the legislature passed the following act:

> "An ACT reviving the act relative to incorporations for manufacturing purposes.

Be it enacted by the people of the state of New-York, represented in Senate and Assembly, That the act, entitled, 'an act relative to incorporations for manufacturing purposes,' passed March twenty-second, in the year one thousand eight hundred and eleven, be and the same is hereby revived and continued in force for five years from the passage of this act."

Easy incorporations and the right to incorporate certain lines of business under the general provisions for the same, were to continue until 1823 by this act. In all cases they were to have limited liability as provided in the original act. This principle was so popular and was considered such an encouragement to business that the legislature of New York, in 1822, went even beyond the English common law in their endeavor to favor the stockholders of business enterprises, viz. they authorized the limited partnership.[1] The law was patterned after the French societe commandite; there was no counterpart in English law, and never has been, until 1907. This is about as far as it has been considered wise to carry the principle of limited liability in business, and, it seems signinficant, that New York state reached this limit as early as 1822.

From 1819 to 1825 there were fewer incorporations for manufacturing purposes. During the year 1820 the legislative policy remained the same. The North (Hudson) River Steam-Boat Company and the Lake Erie Steam-Boat Company were made liable as common carriers but nothing is said as to their liability otherwise. As other acts of this year show the policy to have

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1- Laws of New York. Sess. 45, c 244, and Sess. 50, c 238.

been to give stockholders the benefits of limited liability. The The section making these two companies liable as common carriers reads thus:

> "VI. And be it further enacted, That the members of the said corporation shall be liable, individually, in the same manner as carriers at common law, for the safe transportation of all goods, wares, and merchandize, delivered to the agents of such corporation, and for all contracts which shall be made by such agents, relating to the business of the said corporation."

In 1821 "An ACT to revive and continue in force and operation an 'Act relatice to Incorporations for Manufacturing purposes,'" was passed. This has reference to the same act that was revived during the year 1818 and which was to continue in force for five years. This time, two years before the former act would have expired, a duplicate act was passed and no time limit set. During the next year the original act was amended:

> An ACT to amend an act entitled "An act relative to incorporations for Manufacturing Purposes."

This act continues in force the former acts, which had limited liability, though that is not mentioned in the last act -- it was not necessary to mention it. -- and gives the corporations incorporated under it the right to mortgage their property just as an individual might, provided the written assent of the stockholders owning more than two-thirds of the stock is obtained. This act was passed during the 45th. session of the legislature, April 16, 1822.

The policy of the legislature from this time to 1825

is more difficult to trace, incorporations for general manufacturing or business purposes are fewer, relief acts are more numerous in the session laws of this period. Nevertheless, the legislative policy in regard to new incorporations did not change until 1825.

In this year, however, there was a decided change. The stockholders were held fully liable by clauses like the one in the act incorporating the Troy Steamboat Company, passed March 31, 1825, which read as follows:

> "VII. And be it further enacted, That notwithstanding the said company is hereby incorporated, and not withstanding any thing herein contained, the members and stockholders of the said company, including the directors, shall be answerable and responsible, in all respects, upon all express contracts made by the said corporation, or by the said directors, or by their agents or servants, lawfully authorised, and may at all times be sued and prosecuted either at law or in equity, as if this act had not been passed; and the said stockholders and directors shall also be answerable and responsible upon all implied contracts, and for all acts of malfeasance, misfeasance or nonfeasance of the said company, or of the directors, agents or servants thereof, lawfull authorised, as if the said company were not incorporated, and as if this act had not been passed, any law or usage to the contrary notwithstanding."

Some of the other acts carrying the same clause, or, one similiar were:

An ACT to incorporate the Franklin Manufacturing Company.

Passed April 25, 1825.

An Act to incorporate the Steam Saw Mill Association.
Passed April 8, 1825.

An Act to incorporate the Association of the New York White Lead Works. Passed April 15, 1825.

An ACT to incorporate the New York Mount Hope Loan Company. Passed April 18, 1825.

An ACT to incorporate a Gas Light Company in the Village of Brooklyn. Passed April 18, 1825.

An ACT to incorporate the Hudson River Steamboat company. Passed April 20, 1825.

An ACT to incorporate the President, Managers and Company of the Delaware and Susquehannah Navigation Company.
Passed April 20, 1825.[1]

The acts of the 49th. session of the legislature, 1826, are more varied. It is necessary to study all of them in order to determine just what was the policy then in use. Such a study indicates that limited liability was not a feature of the incorporations of the year 1826, any more than they were of the year 1825. The following incorporations, together, illustrate the changed corporate policy of these two years:

An ACT to incorporate the Cohoes Company.
Passed March 28, 1826.

An ACT to incorporate the Dutchess County Iron-Works and Smelting Company. Passed April 17, 1826.

1- The acts preceeding this point may be found in Laws of New York, 48th. Session.
The acts following this point, to those bearing date of 1827, are found in Laws of New York, 49th. Session.

An ACT to incorporate the New-York Crown Glass Manufacturing Company. Passed March 8, 1826.

An ACT to revive and continue in force the act entitled, "An ACT to incorporate the Oneida Manufacturing Society," Passed March 9, 1810. Passed March 8, 1826.

An ACT to continue in force and amend the act entitled, An ACT to incorporate the Oriskany Manufacturing Company." Passed April 15, 1826.

This incorporating act contains the following clause, which outlines just how the stockholders are to be held liable: (and, it is my opinion, that if all of the acts of this session read as this one does, the stockholders would have had a kind of limited liability very similiar to the kind we have now. I base this opinion of the fact that, in the next session, the expression "to the amount of stock held by them" meant that, if such stock were not fully paid, then the owners could be forced to complete the payments.)

"2. And be it further enacted, That the stockholders of the said company shall be held responsible jointly and severally in their individual capacities, to the amount of stock held by them respectively, for any debts hereafter contracted by the company; and any person having any demand against the said company, may prosecute any stockholder thereof, separately, or any two or more of them jointly, and recover in any court having cognizance thereof: Provided, That no prosecution shall be commenced against any of the stockholders until the person or persons having such demand or demands shall have first prose-

cuted the directors, or such stockholders as were directors at the time when such debt or demand was contracted, to judgement and execution, to the end, that the stockholders who were directors at the time any debt or demand was created, shall be liable in the first instance: And provided further, That no such suit shall be sustained without proof that the payment thereof had been demanded of the proper officer of said company, and refused or not complied with."

An act that was passed only two days later, "An Act to incorporate the Shamrock Manufacturing Company.", contains a much different clause:

"8. And be it further enacted, That the directors and stockholders of the said corporation, and each and every of their heirs, executors and administrators shall be responsible and answerable for the debts contracted or owing by the said corporation, and on all contracts made by the said corporation, or by authority thereof, during the time they are stockholders, to the amount of the stock held by them respectively, in the same manner as if the said directors and stockholders were not incorporated, or were joint-dealers or copartners, and may be sued and prosecuted, either at law or in equity, as if they were carrying on the business and concerns of the said corporation as joint-dealers and copartners, without being incorporated, any thing herein contained notwithstanding."

The last few words of this clause as well as all of it takes as a whole indicate that the stockholders would be held fully liable

for the debts of the company.

The policy of making stockholders fully liable, or nearly so, last only two years, 1825 and 1826, Beginning with the 50th. session of the legislature of New York state new incorporations carried with them the privilege of limited liability. Before the end of the session the new acts of incorporation merely stated the following: "#3 The corporation shall hereafter be subject to the provisions of Title third, Chapter eighteen of the First Part of the Revised Statutes, and this act may at any time be amended or repealed." -- From an act renewing the charter of the Oriskany Manufacturing Company.[1]
The Revised Statutes referred to, have only this to say:

> "Liability of stockholders:- Where the whole capital of a corporation shall not have been paid in, and the capital paid, shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound tp pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the company, or such proportion of that sum, as shall be required to satisfy the debts of the company."

The same statement occurs in the later editions of the Revised Statutes, and this has been the situation existing in the law of the state of New York to date.

1- Some other acts of this session of the legislature that throw light on the policy pursued:

An Act to incorporate the Buffalo Hydraulic Association.
Passed March 8, 1827.

An Act to incorporate the Palmyra Manufacturing Company.

What has been said about limited liability concerns New York state only. In most of the other early states there was not such an orderly and systematic application of the principle, with only one two-year break. In order to show the complete development of limited liability in this country it would be necessary to make a thorough study of the statute laws of all of the states, and, then, it would be difficult to show the existence of any orderly development.

The above-mentioned break in the continuity of this idea, in New York state, was merely an indication of a policy that was current at that time. Kent says, "There has been a disposition in some of the states to change, in an essential degree, the character of private incorporated companies, by making the members personally responsible in certain events, and to a qualified extent, for the debts of the company. This is intended as a check to improvident conduct and abuse, and to add to the general security of creditors; and the policy has been pursued to a moderate and reasonable degree only, in Rhode Island, New York, Maryland, and South Carolina. But in Massachusetts, by a series of statutes, passed in 1808, 1818, 1821, and 1827, an unlimited personal responsibility was imposed upon the

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Continued: Passed March 29, 1827.

An Act to incorporate the Casadagua Steam Mill Company. Passed April 7, 1827.

An Act to incorporate the Monroe Manufacturing Company. Passed March 28, 1828.*

An Act to incorporate the Attica Manufacturing Company. March 31, 1828.*

*51st. Session.

the members of manufacturing corporations, equally as in the case of commercial partnerships. (See Barre Bank v. Hingham Manufacturing company, 127 Mass. 563.) This unlimited personal responsibility was restrained by statute in 1828 and 1830, and the responsilility applied only, in the case of banks, to the stockholders at the time of loss, by minmanagement of directors, or for outstanding bills at the time the charter expires. They are made liable in their individual capacities only to the entent of the stock they may hold in the bank at the time of the abuse, or at the time of the expiration of the charter. This provision was continued by b the Mass. Rev. Stat. of 1836, p. 312, sec. 30, 31, and has been essentially adopted by statute in New Hampshire, in 1837, in respect to manufacturing corporations."[1]

1- Kent's Commentaries. Vol. II, p. 272.

See also Angell and Ames on Corporations. Chap. 17, p. 648-656.

CHAPTER VI.

The effect of limited liability in corporation finance has been to encourage greater business activity, to enable investors to undertake new and untried ventures, to call out capital that might not otherwise have been at the disposal of the business enterprise.

The earliest case of limited liability by statute, in England, was the Act of 1662 which conferred this privilege upon the East India, African, and Fishery companies. Even at this early time it was evident that such a privilege gave those companies an advantage. W. R. Scott remarks, "The effect of this statute was that a shareholder was only liable for the amount unpaid on his shares, and it is clear that such legislation was disadvantageous to unincorporated companies."[1]

Mathew Arnold Begbie, writing in 1848 at the time when the question of limited liability was under discussion everywhere in England, devotes his whole book[2] to discussing the advantages and disadvantages of the principle and always decides in its favor. He shows the advantages of such limitation of liability to the amount of money invested in America and on the Continent of Europe. After discussing the disadvantages of having a few large houses carry on the foreign trade of England

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1- W. R. Scott. Joint Stock Companies to 1720. Vol. I, p. 270.

2- M. A. Begbie. Partnership "en Commandite."

or

Partnership with Limited Liabilities.

and after showing that wild speculation exists because there is no safe place for the middle classes to invest their money he says: "This running rashly into such speculations may be prevented, if the middle classes be allowed to invest their money, with comparative safety, in Great Britain, Ireland, and the Colonies, by means of limited partnerships[1], in which the liability does not extend beyond the actual amount of money put into each concern by each person.....The character and advantages of the principle of Limited Partnerships cannot be more truly and forcibly given than in the words of one of the witnesses, on the Law of Partnership, in 1836:- 'It is chiefly called into operation in extensive manufactories, wherein individual means are necessarily inadequate to supply the capital for carrying on the concern. It holds an intermediate station between Joint-Stock Companies established by Charter or Act of Parliament and the less extensive character of Ordinary Partnership. By its means large and efficient supplies of capital may be obtained and put into operation, free from the Monopoly and uncontaminated by the spirit of share-jobbing, which chartered companies too frequently obtain. It excites Enterprise without inducing Gambling; it increases Manufactures without intro ducing Scheming. Partnerships of this nature are frequently formed where practical science and ability reside in persons who have not the pecuniary means of bringing their talents and skill into operation; but who,

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1- Ibid. While it is the limited partnership that Mr. Begbie is advocating, many of the things that he says about limited liability in them are equally true of the same principle used in the corporation.

by the aid of such associations may be enabled to do so, to the common gain of those who thus associate themselves and to the great promotion of the public good.'.....If the absurd enactments of the British Legislature as to the liability of partners were annulled, and if the system of Limited Partnerships were admitted into operation -- as it is in Holland, Belgium, France, and America -- persons in the middle classes, even with comparatively contracted means, might unite to supply that aggregate of Capital, necessary to carry on different branches of trade and commerce, by which their personal resources would be augmented and the requirements of the country be adequately provided for. Thus, instead of bloated, plethoric houses, started with minimum of capital and conducted with a maximum of dishonesty, we should and ought to have firms with adequate means, whether belonging to a few moneyed individuals, or resulting from the aggregate contributions of numerous persons joined together in an extensive copartnership, and liable only to the extent of the capital which each had brought into that aggregate common stock." Pages more of the same kind of arguments might be taken from this same source. He can not say enough in favor of the principle of limited liability. He attributes the whole prosperity and development of the United States (to the time he wrote, 1848.) to the use of the limited partnership or corporation with limited liability. He says that the prosperity of the United States "has mainly resulted from the aggregate of small means into large amounts, by means of the Limited Partnership.....Why do we thus point out what has been done in the United States with respect to Steam Navigation, Railways, and

the Electric Telegraph? -- Because the triumphs which have then and there been achieved would never have been accomplished without the aid of capital, which, distributed as it is in that country among all classes, never could have been brought to bear upon these aids to national prosperity and social civilization of the law had there been placed a barrier to its employment. But the Limited Partnership system, which so largely prevails there, has enabled capital to be thus employed, without involving the owner in unknown and ruinous risks. It has allowed the use of capital for the construction and ownership of steamboats, railways, and the telegraph. Without it, the latter could never have been completed -- or, at least, not without delay and difficulty. Nearly all the Lines of Telegraph in the United States are in the hands of associations of individuals simply established in special or limited partnership, and are profitably working."

Spencer Brodhurst, writing in MacMillan's Magazine on "Limited Versus Unlimited Liability[1], says, "Joint-stock capital is, no doubt, more venturesome and ready to take risks than is private capital, for the very reason that if failure does ensue the utmost extent of the loss in known beforehand. But it is just the venturous spirit so created which has opened new fields of trade abroad, and has encouraged fresh departures and inventions in commercial operations at home.....There can, indeed, be little doubt that limited liability is to be preferred to unlimited, whether the question be considered from the point of

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1- No. 1898 Vol. 79, p. 20-29.

the community, of the shareholder, or of the creditor."

Jay. P. Lee[1] says, "It is a well-known fact that many of the enterprises which have greatly developed the resources of the country, and which have been of great benefit to society, would never have been undertaken without corporate organizations. No new enterprise is a cinch, it is more or less uncertain and speculative, and where it involves large expenditures of capital, unless the men who undertake it know the limit of their liability, it will remain undeveloped."

Hartley Withers states, "By means of the joint-stock system, far-seeing folk with plenty of ideas and little money are able to get subscriptions for their ideas from those who have funds to invest, and so the material resources of the world have been incalculably increased. Sometimes the ideas do not pay and the subscribers to them are saddened; but, in the meantime, Continents have been covered with railways, oceans have been crowded with steamships, and most of the habitable globe has been joined together into one humming hive of industry."

Kent[3] says that "The multiplication of corporations and the avidity with which they are sought, have arisen in consequence of the power which a large and consolidated capital gives them over business of every kind; and the facility which the incorporation gives to the management of that capital, and

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1- Publications of the Michigan Political Science Association. No. 3, p. 74, 75.

2- Hartley Withers. Stocks and Shares. Intro. 30, 31.

3- Kent's Commentaries. Vol. II, #272.

the security which it affords to the persons of the members, and to their property not vested in the corporate stock."

Nicholas Murray Butler, speaking at the One Hundred and Forth Third Annual Banquet of the Chamber of Commerce of the State of New York, November 16, 1911, said, "This new movement of cooperation has manifested itself in the last sixty or seventy years chiefly in the limited liability corporation. I weigh my words, when I say that in my judgement the limited liability corporation is the greatest single discovery of modern times, whether you judge it by its social, by its ethical, by its industrial or, in the long run, -- after we understand it and know how to use it, -- by its political effects. Even steam and electricity are far less important than the limited liability corporation, and they would be reduced to comparative impotence without it. What is a limited liability corporation? It is simply a device by which a large number of individuals may share in an undertaking without risking in that undertaking more than they voluntarily and individually assume. It substitutes cooperation on a large scale for individual, cut-throat, parochial competition. It makes possible huge economy in production and trading. It means the steadier employment of labor at an increased wage. It means the modern provision of industrial insurance, of care for disability, old age and widowhood. It means -- and this vital to a body like this -- it means the only possible engine for carrying on international trade on a scale commensurate with modern needs and opportunities.

What would happen to the export trade of the United States if we were to give up our limited liability corporations and go

back to individual competition.... If this principle is so beneficent and so important that as soon as it was discovered it spread all over the civilized world and brought about a development the like of which man has never seen, how have our troubles arisen?" This quotation is taken from a discussion of the Sherman law, and the author goes on to show that the business difficulties then present were not due to the limited liability corporation, nor to its size.[1]

From my own study of this subject I have arrived at the same conclusion, viz., that limited liability has had a very beneficial influence upon business; that, without it, many of our modern achievments would have been much slower in their development; that its advantages far outweigh its disadvantages.

FINIS.

Nicholas Murray Butler. Why Should We Change Our Form of Government. p. ,82, 83.

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